

## **REMARKS**

Applicants have carefully reviewed the Office Action dated February 19, 2009. Applicants have amended Claim 1 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 1, 2, 4-8 and 10-15 stand rejected under 35 U.S.C. § 101 because the Examiner considers that the claimed invention is directed to non-statutory subject matter. The Examiner bases this upon the fact that the claim are drawn to a process and that 35 U.S.C. § 101 requires that the process must be either tied to another statutory class such as an apparatus or transform underlying subject matter to a different state or thing. This, as the Examiner is aware, is a holding by the Federal Circuit in *In re Bilski*. This case is currently before the Supreme Court and, as such, this particular test is uncertain at this time. In any event, the claim is directed toward the process operating with respect to a system wherein there is a transformation. This transformation involves the sensed physiological parameters, which are measureable and the perceived physiological parameters by the human brain, which both constitute a vector to a model to be processed therethrough and converted into a prediction. The input parameters are transformed into a prediction and, as such, there is a transform provided and, therefore, the input state is transformed to the output state. As such, Applicant believes that such transformation does meet the test even though this test may not be the ruling test, and Applicant therefore respectfully requests withdrawal of the 35 U.S.C. § 101 rejection with respect to Claims 1, 2, 4-8 and 10-15.

The Examiner has rejected Claims 1, 2, 4-8 and 10-15 under 35 U.S.C. § 112 as being indefinite and failing to provide explanation for a number of terms. First, the Examiner is of the opinion that the claim fails to comply with the written description requirement in that he cannot find support in the specification for the fact that the sensed parameters and determined perceived parameters are “determined temporally proximate to each other.” Applicant refers to Fig. 2 and paragraph [0017] where it describes the fact that there are measureable results of one or more systems, measurable variables and a cognitive input that are input to a model 202. The term “temporally” refers to the fact that it relates to time and the word proximate means that the parameters are all received proximate in time thereto. They can be received substantially at the

## **AMENDMENT AND RESPONSE**

same time or slightly offset in time. For example, it may be that a cognitive output is input at a given time but there is a slight delay for some measurable variable to be generated by a sensing device. They are generated and input to the model at substantially the same time but they can be slightly delayed with respect to each other. Therefore, Applicant believes that this particular aspect is clearly described.

The Examiner has also objected to the term “parameters of physiologic metabolism” as having no explanation and that this term would therefore render the claim terms indefinite. Applicant notes that the original patent was filed with such language and, as such, Applicant does not see that this would be new matter, which the Examiner has indicated. However, in paragraph [0026], clearly the word “metabolism” is utilized as an indication wherein the engine provides an overall model of the metabolism of certain drugs, fats, carbohydrates, etc. over time. Therefore, the model of the metabolism is a model of the physiological system and, therefore, to refer to the parameters being the parameters of the physiologic metabolism as opposed to the physiologic system is straight forward, even though it is noted that the term “physiologic system” is primarily utilized throughout the specification. The Applicant does not believe that it is necessary to change the word “metabolism” to “system.” As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 112 rejection with respect to Claims 1, 2, 4-8 and 10-15.

Claims 1, 2, 4, 5 and 12-15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Nihtila*. This rejection is respectfully traversed with respect to the claims as currently presented.

Applicants’ present inventive concept, is defined by Claim 1, the independent claim currently pending in the application, requires that there be sensed parameters and perceived parameters. These perceived parameters are defined in the claims as being perceived physiologic parameters that relate to the physiologic metabolism of a given human body. These are input together to the model to provide a predicted output that predicts wellness. *Nihtila* merely provides a model of “fitness” wherein only parameters associated with measurable aspects of fitness can be sensed. The Examiner indicated that the claims paragraphs associated with the perceived physiologic parameters were anticipated by paragraph [0030] in *Nihtila*. This paragraph does nothing more than indicate that a virtual physiological model of the user

incorporates various information about the user's stature, age, gender, weight, anatomical conventions and diet. There is nothing about perceived information in this paragraph. Clearly, this is a limitation in the claim and there is no description or suggestion that such would be incorporated into the fitness model of *Nihtila*. *Nihtila* is not concerned with perceptions of an individual as to whether they feel pain or whether they are out of breath, etc. As such, Applicant believes that *Nihtila* does not rise to the level of a 102 reference and, therefore, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102 rejection with respect to Claims 1, 2, 4, 5 and 12-15.

Claims 6-8, 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nihtila* in view of *Kaylor*. This rejection is respectfully traversed with respect to the claims as currently presented.

The addition of the *Kaylor* reference does not cure the deficiencies noted hereinabove with respect to *Nihtila*. There is no suggestion that perception of the physiologic state would be input to a model in order to provide a predicted output. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection with respect to Claims 6-8, 10 and 11.

Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/MAGN-26,326 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,  
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